

APPLICANT:
St. Matthew Lutheran Church and
New Covenant Christian School

REQUEST: Special exception to allow a
school in the R2 District

HEARING DATE: August 8, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5606

ZONING HEARING EXAMINER'S DECISION

APPLICANT: St. Matthew Lutheran Church

CO-APPLICANT: New Covenant Christian School

LOCATION: 1200 E. Churchville Road, east of Bel Air
1204 E. Churchville Road, east of Bel Air
West Side of Moores Mill Road
West Side of MD Route 22, south of Moores Mill Road
Tax Map: 41 and 49 / Grid: 1D / Parcel: 52, 534, 45, 430
Third (3rd) Election District

ZONING: R2 / Urban Resident District

REQUEST: A special exception, pursuant to Section 267-53C(7) of the Harford County Code, to allow a school in the R2 District.

TESTIMONY AND EVIDENCE OF RECORD:

St. Matthew Lutheran Church is located at 1200 E. Churchville Road, just east of Bel Air. The Church grounds consist of four different parcels, having a combined area of approximately 60 acres.

The Applicant wishes to allow the use of a part of its facilities by New Covenant Christian School, currently located on St. Mary's Church Road in Abingdon. In order to use the St. Matthew Lutheran Church (hereinafter sometimes referred to as "Church") grounds for a school use, this special exception is requested.

For the Applicant first testified Jason Van Bommel, who identified himself as the head of New Covenant Christian School (hereinafter sometimes referred to as the "School"). The witness stated that the School presently has a student population of about 200, from pre-school to ninth grade.

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Needing more space for additional classes and students, the School has reached an agreement with the Church to use a portion of St. Matthew's facilities for grades 7 thru 10. Mr. Van Bommel stated that the School's current location on St. Mary's Church Road is highly limited in size and cannot accommodate more students. The school also has a second, temporary location, at Calvary Baptist Church in Bel Air. Being highly restricted in size, the School is unable to meet the demand of parents for additional education by the School, or to admit additional students in upper grades. The School has accordingly been seeking a second location. The Church location has been found by the School to be adequate for the School's purposes.

Mr. Van Bommel testified that the School will primarily occupy the current educational wing at the Church property. That wing is shown on the site plan submitted by the Applicant and in the file as "Education Wing (2 story)". The Education Wing is located on the Route 22 side of the Church property behind what is noted as the "Old Sanctuary".

Mr. Van Bommel described the process by which the St. Matthew Lutheran Church location will be utilized by the School.

During the first year of operation, being the year 2008 - 2009, 70 - 90 students would be admitted in grades 7 thru 10.

For the year 2009 - 2010, 90 - 115 students would be admitted for grades 7 thru 11.

For the year 2010 - 2011, 110 - 140 students would be admitted for grades 7 thru 12.

Mr. Van Bommel envisions a maximum enrollment at the end of four years of approximately 150 students in grades 7 thru 10. Mr. Van Bommel's testimony in this regard was supported by a document titled "Phased-In Use of St. Matthew Lutheran Church", Attachment 1 to the Staff Report.

Mr. Van Bommel believes that the School will be able to grow into its new facility over the described period of time.

Mr. Van Bommel stated that the Calvary Baptist Church facility will continue to be used until the year 2008-2009 when grades 7 - 10 students will be transferred to the St. Matthew Lutheran Church location. That portion of the school located on St. Mary's Church Road will continue to operate.

Mr. Van Bommel, on behalf of the school, agreed to all conditions proposed by the Harford County Department of Planning and Zoning, the most pertinent one being that approval be limited to 150 students.

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Next testified Stephen Burdette who identified himself as Facilities Chairman at St. Matthew Lutheran Church. Mr. Burdette stated that the School will be located on the second floor of what is known as the Education Wing, which is part of the old sanctuary of the Church. Mr. Burdette explained that the Church will continue to use part of this facility for its Sunday School classes, and he sees no problem with the Church and the School co-existing in this facility.

Next testified Mark Keeley, a traffic planner with Traffic Concepts, Inc. Mr. Keeley indicated he had done a capacity analysis for all key intersections surrounding the entrance to the Church facility off MD Route 22. Mr. Keeley found that all key intersections will be operating at a level of service “C” or better. He has determined that there will be, at worse, minimum traffic impacts in the morning, with no impact at all in the evening.

Mr. Keeley introduced a Traffic Impact Study having a date of July, 2007. That Traffic Impact Study, marked Applicants’ Exhibit 1, concluded, *inter alia*:

“The Harford County Adequate Public Facilities program requires all key signalized intersections to operate at a level of service “D” or better and all unsignalized intersections to operate with a side road minor approach level of service “D” or better within the development envelope area. The results show that all of the study intersections will meet these guidelines.

As shown in this report, the proposed school would generate minimal traffic volumes during the weekday peak time periods. Additionally, the weekday PM peak hour associated with the school does not correspond to the weekday PM peak hour of the adjacent street traffic volumes. Therefore, we believe that the proposed school when opened would have a de minimis impact on the surrounding roadway network in terms of roadway capacity and delay. As this project progresses through the approval process, all of the key intersections will be reanalyzed with updated traffic counts as required by the Harford County Adequate Public Facilities Ordinance.”

An attached Exhibit to Mr. Keeley’s report (at Page 21) estimates that during the AM peak hour approximately 72 vehicles will enter the School property, and 47 vehicles will exit. In the PM peak hour approximately 35 vehicles will enter the School property and 48 will exist. Mr. Keeley also noted that the School property accesses MD Route 22 at a signalized intersection.

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Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune reiterated that the Department has recommended approval of the request, with conditions. He observed that the Church property is buffered from adjoining residential properties by a very significant Natural Resources District. He further observed that directly north of the property exists Southampton Middle School, and that no adjoining residential properties should be impacted in any way by the proposed School.

Furthermore, Mr. McClune noted that the school use is consistent with the Harford County Master Plan. He also emphasized that there will be no excavation or construction on the site to accommodate the School, as only existing facilities will be utilized.

In support of its recommended approval, the Staff Report notes:

“The subject property contains 4 separate parcels that total approximately 59.917 acres. A majority of the site is encumbered by wetlands and Flood Plain. The topography of the site is rolling to steep especially near the streams that traverse the property. The site contains an existing church facility. The most recent expansion of the church is not reflected on the aerial photograph. The main access to the site is from Churchville Road (MD Route 22) at the intersection of Brierhill Drive. There is a secondary/emergency access out to Moores Mill Road.”

The Town of Bel Air reviewed the Application and had no specific comment. However, the Memorandum concluded by stating;

“We believe the use will be a benefit to the community.”

There was no testimony or evidence presented in opposition.

APPLICABLE LAW:

Section 267-51 of the Harford County Development Regulations (Code), Purpose states:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

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Section 267-52 of the Code, General Regulations states:

- “A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part I and the public health, safety and welfare.*
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.*
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.*
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”*

This special exception request is governed by Section 267-53C(7) of the Code:

- “C. Institutional uses.*
 - (7) Schools, colleges and universities. These uses may be granted in any district, except the LI and GI Districts, provided that:*
 - (a) Schools, colleges and universities which offer any general academic instruction at levels above the eighth grade must have:*

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- (1) *A parcel of at least three acres. An additional eight hundred seventy-five square feet of parcel area will be required for each student in excess of fifty.*
 - (2) *A parcel frontage of at least three hundred feet.*
 - (3) *A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is approximate to the side lot line and a rear yard depth of at least fifty feet.*
- (c) *All other educational institutions must comply with the following:*
 - (2) *Where the maximum attendance at any one time exceeds forty students, such institution must have:*
 - (a) *A parcel area of at least three acres, plus seven hundred square feet for each student in excess of sixty.*
 - (b) *A parcel frontage of at least two hundred feet.*
 - (c) *A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least fifty feet.*
- (d) *School buses shall be garaged or shall be stored in an area to the rear of the main building and adequately screened.*
- (e) *A buffer yard ten feet wide shall be provided along the boundary with an adjacent residential lot.*

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Section 267-9I, Limitations, Guides and Standards is also applicable to this request and will be discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants propose to allow the operation of a private school having grades 7 thru 12, at the existing church facilities of St. Matthew Lutheran Church and located just outside of Bel Air. The New Covenant Christian School now has its principal facility on St. Mary's Church Road in Abingdon, with a temporary second facility at Calvary Baptist Church in Bel Air. Demand for enrollment in the School program has exceeded the School's available space. Accordingly, it has reached an agreement to locate a facility at St. Matthew Lutheran Church.

The new facility will be limited to no more than 150 students, plus teachers and support staff. Existing facilities will be used. A review of the site plan shows that there will be substantially more parking than would reasonably be necessary for the facility. The Church facilities themselves are surrounded by buffer areas consisting of open space and Natural Resources Districts. The entrance to the Church property onto Maryland Route 22 is at a signalized intersection.

The Applicants presented a traffic report which amply demonstrates that no traffic impact should occur on MD Route 22. No adjoining neighbor has appeared to testify in opposition and, indeed, it is difficult to see how the proposal would impact any adjoining property or neighbor. The proposal is an obviously good use of the existing Church facility, a positive and productive use of the property, and will have no adverse consequence.

The specific special exception standards are discussed as follows:

Section 267-53C(7) states as follows:

C. Institutional uses.

(7) *Schools, colleges and universities. These uses may be granted in any district, except the LI and GI Districts, provided that:*

(a) *Schools, colleges and universities which offer any general academic instruction at levels about the eighth grade must have:*

This proposal is for seventh grade level and above.

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[1] A parcel of at least three acres. An additional eight hundred seventy-five square feet of parcel area will be required for each student in excess of fifty.

An area of over 5 acres is required. The Applicants' propose the school be located on approximately 60 acres. Accordingly, this requirement is met.

[2] A parcel frontage of at least three hundred feet.

The property has over 2,600 feet of frontage along Churchville Road and over 1,700 feet of frontage along Moore's Mill Road.

[3] A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is approximate to the side lot line and a rear yard depth of at least fifty feet.

The Applicants meet these requirements.

Section 267-53C(7)(c)[2] states:

(c) All other educational institutions must comply with the following:

[2] Where the maximum attendance at any one time exceeds forty students, such institution must have:

[a] A parcel area of at least three acres, plus seven hundred square feet for each student in excess of sixty.

The subject property meets the minimum acreage requirement.

[b] A parcel frontage of at least two hundred feet.

The property meets this requirement.

[c] A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least fifty feet.

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The proposal meets these setback requirements.

- (d) *School buses shall be garaged or shall be stored in an area to the rear of the main building and adequately screened.*

More than sufficient room exists to the rear of the building to park any school buses which may be used during the operation of the school.

- (e) *A buffer yard ten feet wide shall be provided along the boundary with an adjacent residential lot.*

The only adjacent residential lots are to the northwest side of the property, opposite a Natural Resource District. The Natural Resource District provides a more than adequate buffer for these lots.

Accordingly, it can be seen that the proposal easily meets all specific requirements of the applicable special exception statute.

Furthermore, it is found that a consideration of the Limitations, Guides and Standards section of the Harford County Development Code, Section 267-9I does not raise issues which would require the denial of the requested special exception:

- (1) *The number of persons living or working in the immediate area.*

This area of Harford County contains residential, institutional and commercial uses. The proposal is an appropriate use of this currently institutionally used large parcel of property. There will be no adverse impact on the people living or working in the vicinity.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The Applicants' presented a traffic impact study which amply shows no adverse impact on the users of MD Route 22. Access to MD Route 22 is signalized, and the "de minimis" traffic which will be generated by the proposal will have no impact on existing traffic.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The proposal should have no impact on the growth of the neighborhood, and no adverse fiscal impact.

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- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such impacts have been identified.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Sheriff's Office and the Maryland State Police will provide police protection. The Bel Air Volunteer Fire Companies will provide fire protection. The property is now serviced by public water and sewer.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The request is consistent with generally accepted planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

The proposal will have no identifiable impact on current institutional uses in the area.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is compatible with existing zoning and the Harford County Master Land Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

The subject property contains sensitive environmental features, which are adequately protected. No disturbance from the school activity is anticipated.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

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It can, again, clearly be seen that the Applicants comply with the more generalized considerations of the Limitations, Guides and Standards section.

Lastly, it must be shown that the use under the standard of Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981), has no greater impact at the proposed location than such a use would generally exhibit at any other location within the particular zone. The school, as pointed out above, in fact, should have no discernable negative impact. Indeed, the school should be a positive contribution to the quality of life of Harford County.

CONCLUSION:

For the above reasons it is recommended that the requested special exception be granted, subject to the following:

1. The Applicants shall obtain all necessary permits and inspections for the use and any renovations to the existing structure.
2. The Applicant shall submit a detailed site plan to the Department of Planning and Zoning for review and approval thru the Development Advisory Committee.
3. The approval shall be limited to 150 students.

Date: September 12, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 10, 2007.